



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 23, 2011

Mr. Carey E. Smith  
General Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2011-03973

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412011 (Commission OR-20101231-5623).

The Texas Health and Human Services Commission (the "commission") received a request for a list of individual transactions using a "Lone Star Card" under the Temporary Assistance for Needy Families ("TANF") program and Supplemental Nutrition Assistance Program ("SNAP") in San Antonio during a specified time period, and the total number of transactions within San Antonio during a specified time period. You state the commission will release information responsive to the second part of the request pertaining to TANF transactions. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the commission's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney

---

<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. See Gov't Code § 552.301(e)(1)(A)-(D). You state the commission received the request for information on December 30, 2010. January 17, 2011 was a state holiday. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Because you do not inform this office the commission was closed for business any additional days between December 31, 2010 and January 21, 2011, we find the commission's fifteen-business-day deadline was January 21, 2011. The commission did not submit written comments explaining why the stated exception applies or a copy or representative sample of the information requested until January 24, 2011. See *id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the commission failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You raise section 552.101 of the Government Code, which can provide a compelling reason to withhold information. Accordingly, we will consider the applicability of this exception to the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the [commission's]<sup>2</sup> assistance programs, it is an offense for a person to solicit,

---

<sup>2</sup>See Act of June 10, 2003, 78<sup>th</sup> Leg., R.S., ch. 198, 2003 Tex. Gen. Laws 611, 641 (abolished Texas Department of Human Services).

disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the [commission] or acquired by employees of the [commission] in the performance of their official duties.

Hum. Res. Code § 12.003(a) (footnote added); *see also id.* § 21.012 (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs). The term “assistance” in sections 12.003 and 21.012 includes “all forms of assistance and services for needy persons authorized by Subtitle C” of title 2 of the Human Resources Code. *Id.* § 11.001(4); *see also id.* § 31.001 *et seq.* (Assistance Programs). In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the [commission]’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” Open Records Decision No. 584 at 3 (1991). Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See also* 42 U.S.C. § 1396a(a)(7) (state plan for medical assistance must provide safeguards that restrict use or disclosure of information concerning applicants and recipients to purposes directly connected with administration of plan); 42 C.F.R. §§ 431.300 *et seq.*; Hum. Res. Code § 21.012(a); Open Records Decision No. 166 (1977).

You state that the information at issue identifies individuals receiving benefits under the TANF program and SNAP. You further assert that each transaction in Exhibit B pertains to a specific individual receiving commission assistance. Upon review, we agree that the information in Exhibit B consists of information pertaining to individuals receiving commission assistance. You state and we agree that the release of this information in this instance would not be for purposes directly connected with the administration of these programs. Accordingly, we find the commission must withhold the information in Exhibit B, which pertains to individual TANF and SNAP transactions, under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code.<sup>3</sup> However, you have not demonstrated that the information in Exhibit B1, which pertains to aggregated SNAP merchant transactions, discloses information concerning individual applicants or recipients of commission benefits. Therefore, the commission may not withhold the information in Exhibit B1 on the basis of section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code.

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 278.1(q) of title 7 of the Code of Federal Regulations. A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision Nos. 476 (1987), 226 (1979). Section 278.1(q) provides in part:

(q) Use and disclosure of information provided by firms. With the exception of [employee identification numbers ("EINs")] and [social security numbers ("SSNs")], any information collected from retail food stores and wholesale food concerns, such as ownership information and sales and redemption data, may be disclosed for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations, and can be disclosed to and used by State agencies that administer the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Such information may also be disclosed to and used by Federal and State law enforcement and investigative agencies for the purpose of administering or enforcing other Federal or State law, and the regulations issued under such other law. Such disclosure and use shall also include companies or individuals under contract for the operation by, or on behalf of [the United States Department of Agriculture Food and Nutrition Service ("FNS")] to accomplish an FNS function. Such purposes include the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law. Any person who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by Federal law or regulations any information obtained under this paragraph shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Safeguards with respect to [EINs] are contained in paragraph (q)(2) of this section. Safeguards with respect to [SSNs] are contained in paragraph (q)(3) of this section.

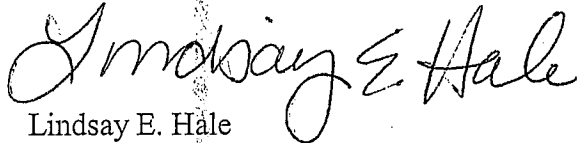
7 C.F.R. § 278.1(q). You contend that the information in Exhibit B1, which pertains to aggregated SNAP merchant transactions, is confidential under section 278.1(q). You state the requestor does not represent any of the entities authorized to receive such information. Upon our review, we determine the commission must withhold the information in Exhibit B1 from disclosure under section 552.101 of the Government Code in conjunction with section 278.1(q) of title 7 of the Code of Federal Regulations.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at

(877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in dark ink and is positioned above the printed name and title.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/em

Ref: ID# 412011

Enc. Submitted documents

c: Requestor  
(w/o enclosures)